Crl.Misc.A.No.206 MA OF 2006

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.A.No.206 MA OF 2006
Date of Decision: 01-08-2006

The State of Haryana

.....Appellant

VERSUS

Chhinder Singh son of Jawala Singh, aged 45 years, Jat Sikh, agriculturist, resident of Village Rori District Hisar.

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.SS Goripuria, Deputy Advocate General, Haryana.

R S MADAN, J.

This Criminal Appeal under Section 378(3) of the Code of Criminal procedure is filed by the State of Haryana for grant of leave to appeal against the judgment of acquittal dated 27-10-2005 passed by the Additional Sessions Judge, Sirsa.

In brief, the facts of the case are that on 5-7-2003 Hukam Chand, Assistant Sub Inspector, Police Station Rori along with some police officials was present at “T” point of Jatana Road at about 1.30 A.M. One person was noticed coming on a scooter from the side of Village Jatana. He was signaled to stop. He stopped his scooter and after leaving his scooter,

he ran away in nearby fields. He was carrying a bag containing 40 kgs. of poppy straw tried with the rear side of said scooter. ASI Hukam Chand drew two samples weighing 100 grams each from the bulk of poppy straw. Samples and residue poppy straw bag were made into parcels and were duly sealed by ASI Hukam Chand, handed over to Head Constable Inder Singh. Sample parcels, residue poppy straw bag, scooter No.PB-44-9620 were taken into possession by police vide recovery memo Ex.PW4/A. A formal FIR Ex.PW4/C was registered at Police Station Rori by sending a ruqa Ex.PW4/B. After preparing the rough site plan of the place of occurrence, a report Ex.PW3/A under Section 57 of the Narcotic Drugs and Psychotropic Substances Act was also prepared at the spot by the Investigating Officer. ASI Hukam Chand produced the case property before Mr.Budh Singh, SHO, Police Station Rori. After recording the evidence of various witnesses as well as extra judicial confession made by accused Chhinder, he was arrested in this case.

After completing all formalities, police filed the present challan against the accused under Section 15/16 of Narcotic Drugs and Psychotropic Substances Act.

On appearance of the accused before the learned Additional Sessions Judge, Sirsa, he was charge-sheeted under Section 15 of the Act. The aforesaid charge-sheet was read over and explained to the accused, to which he pleaded not guilty and claimed trial.

The prosecution in all examined five witnesses. They are PW1-Satpal Singh, Head Constable No.787, HPA Madhuban, PW2-Karambir Singh, Head Constable No.799, Police Station, Kalanwali, PW3-Budh Singh, Sub Inspector, Police Line, Sirsa, PW4-Hukam Chand,

Assistant Sub Inspector and PW5-Inder Singh, Head Constable No.402. Thereafter, the learned Public Prosecutor after tendering the evidence, closed the case of the prosecution.

After the case of the prosecution was closed, the statement of the accused under Section 313 of Code of Criminal Procedure was recorded, in which the entire version of the prosecution was put to the accused, to which he pleaded innocence and alleged that he was falsely implicated in the present case.

In defence, the accused examined Raj Kumar, MHC No.239, Police Station, Rori and relied upon the documents Ex.DA to Ex.DC.

After considering the evidence brought on record, the learned Additional Sessions Judge, Sirsa did not find favour with the prosecution version and acquitted the accused as mentioned above.

Aggrieved by the impugned order of acquittal, the State has filed the present application under Section 378(3) of the Code of Criminal Procedure to seek leave to appeal against the order of acquittal.

We have heard the learned counsel for the parties.

The learned trial Court while acquitting the accused was of the view that there are discrepancies in the statements of PW4-Hukam Chand and PW5-Inder Singh where the writing work was done by the Police Party. According to PW4-Hukam Chand, the writing was done at the spot whereas PW5-Inder Singh stated that writing work was done on the wall of a culvert. Both the PWs were the members of the Police Party. They were contradicting the statements of each other with respect to the place of recovery and the writing work done by the members of the Police Party.

Another discrepancy pointed out was with respect to the non-joining of independent witness during investigation nor any one was called by them whereas PW5-Inder Singh deposed that he and Hukam Chand had gone to call independent witnesses from nearby houses but none had opened the door of their house.

According to the prosecution, accused has suffered an extra judicial confession before Puran Singh and Nazar Singh but none of the witnesses has been produced in the Court to substantiate this part of the prosecution version. They are the most material witnesses to corroborate the version of the prosecution.

Admittedly, the accused was not apprehended at the spot i.e. at the place of recovery of contraband whereas the police party was well armed but they allowed the accused to run away from the spot. When all these factors are taken into consideration, an inference could be drawn that accused is not the same person, who was driving scooter No.PB-44-9620 on 5-7-2003. No test identification parade was conducted by the Investigating Officer to find out the real culprit.

Thus in the absence of any cogent and convincing evidence, the learned Trial Judge has rightly acquitted the accused but confiscated the case property to the State.

After going through the contradiction appearing in the statements of the witnesses of the prosecution as well as that no independent witness was associated at the time of effecting recovery of the contraband and that no identification parade was conducted, the prosecution has even failed to examine the PWs before whom the accused has suffered extra judicial confession.

In the absence of any cogent and convincing evidence as well as that no infirmity has been pointed out by the State counsel, leave to appeal is declined.

We, therefore, dismiss the same.

(K S GAREWAL)
JUDGE

(R S MADAN)
JUDGE

August 01, 2006
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